

REMARKS

The present amendment is in response to the Office Action dated May 13, 2009. Claims 1-33 are present in the case. By this amendment, claims 14 and 15 have been amended to correctly state their dependency on claim 3. This overcomes the antecedent basis objection to claim 14.

In response to the Examiner's objection to the drawings, Applicant submits replacement drawing sheets.

Further, Applicant has amended paragraph 0047 to include reference to items 30 and 32. This does not add subject matter to the application, but merely clarifies the data already presented in Figure 5. The Examiner's objection is now moot.

Rejection of Claims under 35 USC §103(a)

Claims 1-33 stand rejected under 35 USC §103(a) as being unpatentable over U.S. Patent No. 6,574,504 of Mazaury et al.

Applicant contends that Mazaury et al. do not teach the present invention. Mazaury et al. describe a method for cosmetic treatment of the scalp using essential oils and electromagnetic fields. Electromagnetic waves are emitted using an antenna placed up to 50 cm from the skin to be treated. The electromagnetic radiation is pulsed in bursts or impulses. The emission frequency is 1 to 300 MHz with spacing between the impulses of 0.1 to 200ms, and each impulse is disclosed as being from 0.1 to 200ms in width. See col. 4, lines 14 to 23.

Mazaury et al. therefore discloses:

- 1) a means for producing an electromagnetic field (helmet 1, control means 5 and antenna 3);
- 2) control means (control means 3); and
- 3) an electromagnetic wave generator which produces an emission wherein the duration of the impulse and the spacing between is always identical.

The present invention can be differentiated from Mazaury et al. by at least the following features:

- (i) the device in Mazaury et al. uses electromagnetic radiation of a certain frequency emitted via an antenna; whereas the present invention provides a magnetic field with a low magnetic flux density, produced by a coil.
- (ii) the duration and time spacing between two pulses are the same in Mazaury et al. (see col. 4, lines 23 to 26). Indeed the specification specifically identifies the advantages in this spacing; in contrast the present invention discloses that there should be two different time spacings between pulses - one being of short duration between pulses during the active portion (identified as 20 in Figure 3) and one being of longer duration during the inactive portion (identified as 21 in Figure 3).

The Examiner suggests that it would be "...obvious to one having ordinary skill in the art to experiment with various pulse lengths and combinations to determine the best combination to deliver a particular compound." However, this suggestion runs counter to the explicit teachings in the cited prior art, which talk about identical duration and spacings between impulses (see col. 4, lines 23 to 26) and indicates that this provides advantages to the invention of Mazaury et al.

Nothing in the prior art, to the best of Applicant's knowledge, discloses that there should be inactive periods interspersed between electromagnetic signal pulses and that the length of these inactive periods should be larger than the length of the active period of electromagnetic signal pulses. Indeed, Applicant's discovery is counterintuitive to the ordinary operation of the device. In ordinary operation, electromagnetic wavelengths increase the transdermal delivery of therapeutic substances. However, Applicant has identified that, by allowing breaks between active periods of electromagnetic wave delivery which are greater than the active period, the operator can achieve remarkably improved results compared with maintaining constant wavelength delivery.

All of the claims remaining in the application are now believed to be allowable. Favorable consideration and a Notice of Allowance are earnestly solicited.

Commissioner is hereby authorized to charge the required extension fees to Deposit Account No. 04-0258 of Davis Wright Tremaine LLP. If additional fees are believed necessary, the Commissioner is further authorized to charge any deficiency or credit any overpayment to Deposit Account No. 04-0258.

If questions remain regarding this application, the Examiner is invited to contact the undersigned at (206) 757-8133.

Respectfully submitted,
Jeffrey D. Edwards
DAVIS WRIGHT TREMAINE LLP

By George C. Rondeau, Jr./
George C. Rondeau, Jr.
Registration No. 28893

1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045
Phone: (206) 622-3150
Facsimile: (206) 757-7700